

CHAPTER 21

Granting of Easements

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CHAPTER 21

Granting of Easements

1. NAVAL FACILITIES ENGINEERING COMMAND RESPONSIBILITY FOR EASEMENTS.

The Naval Facilities Engineering Command is responsible for the processing of all proposed grants of easements in real property under the jurisdiction of the Department of the Navy, and has responsibility and authority under SECNAVINST 11011.47 for (1) obtaining required approvals and thereafter granting easements, (2) relinquishing legislative jurisdiction in connection with such easements, and (3) terminating easements.

2. POLICY.

Any grant of easement restricts to some degree the Navy's right of use in the property involved. Also, an easement may adversely affect the Navy's future use of the property, or its disposal. Consequently, it is the general policy of the Department of the Navy to restrict the granting of easements in Navy real property to cases of necessity, and to impose such limitations on the scope, terms, and conditions of easements as will protect the Government's adjoining property and its remaining interest in the easement area.

3. DEFINITIONS.

a. Easement: This term, as it has developed in law, is not one that can be precisely defined, since it has been applied to diverse rights in land. For the purposes of this Chapter, an easement may be defined as a right, not removable at will, to use real property of the Government for a limited purpose.

b. Federal-aid Highway: A highway forming a part of one of the four Federal-aid systems, which are: (1) the National System of Interstate and Defense Highways (short title: the Interstate System); (2) the Federal-aid Primary System; (3) the Federal-aid Secondary System; and (4) the Federal-aid Urban System, all as set forth in 23 U.S.C. 103.

c. Defense Access Road: A road constructed for access to a military reservation, or for certain other purposes, as set forth in 23 U.S.C. 210.

d. Transfer of lands or interest in lands: A transfer to a State by the Secretary of Transportation, or his designee, of fee simple title or lesser interest in Government lands for use as a right-of-way for a Federal-aid Highway or a Defense Access Road, or as a source of materials for the construction or maintenance of such a highway or road that is adjacent to lands under the control of the Department of the Navy.

Comment: A transfer of this nature is accomplished by the Secretary of Transportation under the authority of 23 U.S.C. 317. As a general rule, such a transfer would be resorted to only if a grant of easement or license under the authority available to the Navy would not satisfy the requirements of the State involved. For information on procedures for transfers, consult the disposal chapter of this publication.

e. Excess property: Navy property that has been determined to be excess to the needs of the Department of Defense, and has met the approval and reporting requirements of SECNAVINST 11011.47 and 10 U.S.C. 2662. For information on easement authority, refer to paragraph 5.

f. National Register of Historic Places: As defined in 16 U.S.C. 470a, the National Register of Historic Places is a list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture. The Secretary of the Interior is authorized under 16 U.S.C. 470a to expand and maintain the Register, and to take various steps for the preservation, acquisition, and development of the properties listed in the Register.

4. EASEMENT AUTHORITY OF THE SECRETARY OF THE NAVY.

Authority for the granting of easements over, across, in, and upon lands under the control of the Department of the Navy has been vested in, or delegated to, the Secretary of the Navy by the laws and directives listed below:

- a. 43 U.S.C. 961, for poles and lines for electric power and communication purposes, and for certain structures and facilities for radio, television, and other forms of communication.
- b. 10 U.S.C. 2669, for gas, water, and sewer pipelines.
- c. 10 U.S.C. 2668, for various purposes specified and any other purpose the Secretary considers advisable, except a purpose covered by 43 U.S.C. 961 or 10 U.S.C. 2669.
- d. DOD Directive 5160.63 of 6 July 1972, by which the Secretary of Defense delegated to the Secretaries of the Military Departments his easement authority under 40 U.S.C. 345c. This law authorizes the granting of interests to States or their political subdivisions for the widening of public highways, streets, and alleys, except where the necessary interest can be transferred under 23 U.S.C. 317, which deals with Federal-aid Highways and Defense Access Roads.
- e. DOD Directive 5160.63 of 10 August 1978, by which the Secretary of Defense delegated to the Secretaries of the Military Departments, in addition to the easement authority in d, above, his easement authority under 40 U.S.C. 319-319c. This law authorizes the granting of easements for any purpose determined by the head of the executive agency controlling the property to be not adverse to the interests of the United States.

5. AUTHORITY FOR GRANTING EASEMENTS IN EXCESS PROPERTY.

The Secretary of the Navy retains his authority to grant easements affecting excess property until the property is actually reported to the General Services Administration in accordance with Federal Property Management Regulations, Part 101-47.2 After such reporting, control of the property and the authority to grant easements therein rest with GSA.

6. EASEMENTS FOR RIGHTS-OF-WAY FOR POLES AND LINES FOR ELECTRIC POWER AND COMMUNICATION, UNDER 43 U.S.C. 961.

This law authorizes the head of the department having jurisdiction over the affecting lands to grant easements for periods not exceeding fifty years for rights-of-way for poles and lines for transmission and distribution of electric power, and for poles and lines for communication purposes, to the extent of 200 feet on each side of the center line of such poles and lines. It also authorizes easements for rights-of-way, not to exceed 400 feet by 400 feet, for construction, installation, operation, and maintenance of transmitting,

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relay, and receiving structures and facilities for radio, television, and other forms of communication. It provides that the easements may be forfeited and annulled, by declaration of the head of the department having jurisdiction over the lands, for non-use for a period of two years, or for abandonment.

7. EASEMENTS FOR RIGHTS-OF-WAY FOR GAS, WATER, AND SEWER PIPELINES, UNDER 10 U.S.C. 2669.

10 U.S.C. 2669 authorizes the Secretary of a Military Department to grant easements for rights-of-way for gas, water, and sewer pipelines upon such terms he considers advisable, if he finds that such action will be in the public interest and will not substantially injure the interest of the United States in the property affected. The only statutory limitations upon such authority are that the easement may not include more land than is necessary, and that the Secretary may terminate the easement, in whole or in part, for any of the following:

- a. Failure to comply with the terms of the grant.
- b. Non-use.
- c. Abandonment.

8. EASEMENTS FOR OTHER PURPOSES, UNDER 10 U.S.C. 2668.

a. 10 U.S.C. 2668 authorizes the Secretary of a Military Department, when he finds that it will not be against the public interest, to grant upon terms he considers advisable easements for rights-of-way for the following:

- (1) Railroad tracks.
- (2) Oil pipelines.
- (3) Substations for electric power transmission lines, telephone lines, and telegraph lines; and pumping stations for gas, water, sewer, and oil pipelines.
- (4) Canals.
- (5) Ditches.
- (6) Flumes.
- (7) Tunnels.
- (8) Dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish culture.
- (9) Roads and streets.
- (10) Any other purposes he considers advisable, except a purpose covered by Section 2669 of Title 10 or Section 961 of Title 43.

b. The only statutory limitations on such authority are that the easement may not include any more land than is necessary, and that the Secretary may terminate the easement, in whole or in part, for any of the following:

- (1) Failure to comply with the terms of the grant.
- (2) Non-use for a two-year period.
- (3) Abandonment.

9. EASEMENTS FOR ROAD WIDENING, UNDER 40 U.S.C. 345g.

This law provides that, upon application by a State or a political subdivision of a State in connection with an authorized widening of a public highway, street, or alley, the head of the executive agency having control over

the affected real property, excluding public lands, may convey or otherwise transfer, with or without consideration, such interest in the real property as he determines will not be adverse to the interests of the United States. The grant is subject to such terms and conditions as he deems necessary to protect the interests of the United States. This law further provides that it shall not be deemed to authorize the conveyance or other transference of any interest in real property which can be transferred to a State, or political subdivision thereof, for highway purposes under Title 23 U.S.C. 317. No other statutory limitations are imposed upon easements granted under this authority.

10. GENERAL EASEMENT AUTHORITY UNDER 40 U.S.C. 319-319c.

a. Under this authority, whenever a State or a political subdivision or agency thereof, or any person applies for the grant of an easement in, over, or upon real property of the United States for a right-of-way or other purpose, the executive agency having control of such real property may grant to the applicant, on behalf of the United States, such easement as the head of such agency determines will not be adverse to the interests of the United States, subject to such reservations, exceptions, limitations, benefits, burdens, terms, or conditions as the head of the agency deems necessary to protect the interests of the United States. The grant may be made without consideration, or with monetary or other consideration, including any interest in real property. In connection with the grant, the executive agency concerned may relinquish to the State in which the affected real property is located such legislative jurisdiction as the executive agency deems necessary or desirable.

Relinquishment may be accomplished by filing with the Governor of the State concerned a notice of relinquishment to take effect upon acceptance thereof, or by proceeding in such manner as the laws applicable to such State may provide.

b. The easement authority conferred by the foregoing is in addition to, and shall not affect nor be subject to, any other law under which an executive agency may grant easements; it does not apply to the public lands (including minerals, vegetative, and other resources) in the United States, including lands reserved or dedicated for national forest purposes, lands administered or supervised by the Secretary of the Interior in accordance with 16 U.S.C., Indian-owned trust and restricted lands, and lands acquired by the United States primarily for fish and wildlife conservation purposes and administered by the Secretary of the Interior, lands withdrawn from the public domain primarily under the jurisdiction of the Secretary of the Interior, and lands acquired for national forest purposes.

c. With respect to the terms and conditions of any easement granted under this authority, these are left to the discretion of the head of the agency controlling the property, except that if the easement contains a termination right in the Government (it is not mandatory under the law), its exercise shall be subject to the giving to the grantee of a written notice of the termination, which shall be effective as of the date of such written notice.

11. PROHIBITION AGAINST EASEMENTS.

No easement shall be granted solely to serve Navy or Marine Corps activities. In such a case, the necessary right or privilege shall be granted under the contract for services or supplies, or under a license.

12. DETERMINATION BY THE SECRETARY OF THE NAVY.

In accordance with 43 U.S.C. 961, 10 U.S.C. 2669 and 2668, 40 U.S.C. 319, and 40 U.S.C. 345c, the Secretary has found that granting of easements for the purposes set forth therein will be in the public interest and will not substantially injure the interests of the United States in the property when the Commander, Naval Facilities Engineering Command, or his designee, finds that:

- a. The real property involved is the only property which reasonably can be used for the purpose.
- b. An easement is most appropriate interest for the purpose.
- c. The policies set forth in SECNAVINST 11011.47 are followed. (see paragraph 5 of Chapter 18)

13. DELEGATION OF AUTHORITY TO THE COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND.

The Secretary of the Navy by SECNAVINST 11011.47 (see paragraph 6 of Chapter 18) has delegated to the Commander, Naval Facilities Engineering Command, with the right to redelegate, authority to take all necessary action to grant, amend, administer, and terminate easements on Navy-controlled real property to organizations and persons outside the Department of the Navy under the authorities described in paragraphs 6 through 10 above. He is further authorized, with the right to redelegate, to relinquish legislative jurisdiction pursuant to 40 U.S.C. 319 when granting easements pursuant to said instruction. The granting of easements under this instruction is conditioned upon each easement containing certain provisions which are included in paragraph 15.

14. REDELEGATION OF AUTHORITY TO COMMANDERS/COMMANDING OFFICERS OF NAVAL FACILITIES ENGINEERING COMMAND FIELD DIVISIONS.

Officers commanding Naval Facilities Engineering Command field divisions (EFDs) are hereby authorized to perform the following, subject to the approval requirements of this Chapter:

- a. make the findings set forth in paragraph 12, and when all such findings are made in writing, grant easements in accordance with 43 U.S.C. 961, 10 U.S.C. 2669 and 2668, 40 U.S.C. 319, and 40 U.S.C. 345c;
- b. relinquish legislative jurisdiction in accordance with 40 U.S.C. 319 in connection with the granting of easements pursuant to a, above;
- c. grant easements which do not conform to this Chapter, and relinquish jurisdiction in connection therewith.

- d. amend easements as long as the easement continues to conform to this chapter or is reviewed for legal sufficiency by local EFD/EFA counsel.
- e. terminate easements in accordance with the terms and conditions of such easements.

The authority delegated herein may be redelegated.

15. REQUIRED TERMS AND CONDITIONS FOR EASEMENTS.

Subject to certain exceptions noted below, any easement to be granted under the authority redelegated by paragraph 14 shall contain the following terms and conditions:

- a. The grantee shall be required to maintain the property involved in good condition and make all necessary repairs promptly.
- b. The grantee's use of the property shall be subject to reasonable Government regulations to avoid interference with Government activities

Exception: Provision b. may be omitted from easements for Federal-aid Highways and Defense Access Roads.

c. The easement shall provide for the relocation, at the grantee's expense, of any facilities constructed or installed by the grantee for its purposes, if at any time the easement interferes with Government activities, and shall reserve to the Government the right to terminate the easement if relocation is not feasible.

Exception: The relocation provision may be omitted when the easement is for a highway, road, or street; it also may be omitted from easements for other purposes if it can reasonably be determined under the circumstances that relocation will not be necessary (refer to paragraph 17 for procedure for that determination).

d. The easement shall provide for termination for default, non-use for a period of two consecutive years, or abandonment.

e. The easement shall provide that, upon its termination, the grantee, if requested by the Government to do so, shall remove, at the grantee's expense, any or all of the improvements constructed or installed by, and for the use of, the grantee, and shall restore the premises.

Exception: The removal-and-restoration provision may be omitted when the easement is for a highway, road, or street; it also may be omitted from easements for other purposes if it can reasonably be determined under the circumstances that removal and restoration will not be necessary (refer to paragraph 18 for procedure for that determination).

f. The easement shall also conform to the applicable requirements of paragraph 16, immediately following.

16. ADDITIONAL TERMS AND CONDITIONS FOR EASEMENTS.

a. An easement for a Federal-aid Highway may include such provisions as are necessary to release or grant to the State control over access to the highway from adjoining Navy lands. Whenever access rights are released, the easement shall reserve the following:

(1) A right in the United States to enter and leave the highway at any point along the abutting Government-owned land during any emergency declared by the President or the Congress. This right shall include the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation structures, including acceleration and deceleration lanes; provided that all such temporary facilities shall, subject to the availability of appropriations, be removed within a reasonable time after official termination of the emergency.

(2) A right in the United States to construct, from time to time, grade-separation crossing structures or pedestrian crossing structures over or under the controlled-access highway at such points as may be deemed necessary, together with the additional right to cross over or under the right-of-way covered by the easement with utility lines and related facilities; provided, however, that such rights shall be exercised in accordance with regulations issued by the Secretary of Transportation and policies adopted by the Federal Highway Administrator.

b. An easement issued in accordance with 43 U.S.C. 961 shall provide for a term of not more than fifty years. Easements issued under other

authorities shall not, as a general rule, exceed fifty years unless the circumstances, including legal limitations on the authority of the grantees, require the easements to be for longer terms or in perpetuity.

c. Subject to a special approval requirement in some cases, as set forth in paragraph 30, an easement grantee may be required, at the grantee's expense, to relocate or replace Government-owned facilities that will be impaired by the easement, provided the relocated or replacement facilities are of the same category and are required for a continuing military need.

d. Easements may include such additional terms and conditions not inconsistent with 16.a through 16.c, or 15.a through 15.f, as may be determined to be in the best interest of the Government.

17. PROCEDURES FOR OMISSION OF RELOCATION PROVISION.

As stated in 15.c, the relocation provision may be omitted from easements for roads, streets and highways. With respect to easements for other purposes, it may be omitted by Commanders/Commanding Officers of EPDs only under the following conditions:

- a. The prospective grantee has specifically requested the omission.
- b. It reasonably can be determined under the circumstances that relocation of the grantee's improvements will not be necessary, and the Commander/Commanding Officer of the EPD, with the written concurrence of the affected activity, has made that determination in writing. In such a case, the determination and concurrence shall be recited when seeking the approvals required by this chapter.

Comment: If the relocation provision is omitted, and if future military requirements necessitate the relocation of the grantee's improvements, the cost of such relocation would fall upon the Government. Accordingly, the possibility of future expansion of on-station military facilities in the vicinity of the easement should be carefully examined prior to any determination for the omission of the relocation provision.

18. PROCEDURE FOR OMISSION OF REMOVAL-AND-RESTORATION PROVISION.

As stated in paragraph 15.e, the removal-and-restoration provision may be omitted from easements for highways, roads, or streets. With respect to easements for other purposes, that provision may be omitted only under the following conditions:

- a. The prospective grantee has specifically requested the omission.
- b. It can reasonably be determined that removal of the grantee's improvements and restoration of the premises will not be necessary, and the Commander/Commanding Officer of the EPD, with the written concurrence of the head of the affected activity, has made that determination in writing. In such a case, the determination and concurrence shall be recited when seeking the approvals required by this Chapter. Before making such a determination, careful consideration should be given to the possible effects of the omission on the Government's use of the property, and on other Government activities in the area.

19. REQUIREMENT FOR FAIR VALUE.

Notwithstanding the absence of a statutory requirement for the payment of a consideration, it is the policy of the Department of the Navy to require such payment, in an amount equal to the fair value of the easement.

However, in determining the amount of cash consideration for an easement involving benefit to the Government, credit may be allowed against the fair value to the extent of the value of the benefit. Such values shall be established by recognized appraisal practices, as set forth in Chapter 16 of this publication. Examples of benefits which may be credited against fair value are (1) improved traffic flow to and from a Government installation resulting from an easement for a public road; (2) improved drainage of a Government installation resulting from an easement for a storm-drainage channel.

20. EXCEPTION TO REQUIREMENT FOR FAIR VALUE.

No consideration will be charged for easements for Federal-aid Highways or Defense Access Roads.

21. PROCEDURES.

The following paragraphs prescribe procedures for the granting, administration, and termination of easements.

22. PRELIMINARY DETERMINATIONS ON EASEMENT REQUEST.

a. Upon receipt of a request for an easement, the EFD, with the concurrence of the affected activity, will determine as follows:

(1) The United States has sufficient estate in the property involved, and the Department of the Navy has sufficient jurisdiction, to grant the requested easement.

(2) The property is not encumbered by other rights which would be incompatible with the proposed use. (When making this determination, the possible relevance of paragraphs 23 and 24 should be considered.)

(3) The applicant has the capacity to acquire the easement and comply with its terms.

b. If any of these preliminary determinations cannot be made, the applicant should be advised of the inability of the Navy to grant the proposed easement, and of alternative courses of action, if any. If all of the foregoing determinations can be made, they should be made in writing and continuing action should be taken as hereinafter set forth.

23. SPECIAL PROCEDURE WHEN PROPERTY LISTED IN NATIONAL REGISTER IS INVOLVED IN AN EASEMENT PROPOSAL.

a. 16 U.S.C. 470f provides that "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking".

b. The granting of an easement involving National Register property should be avoided. However, if there are compelling circumstances justifying such a grant, the EFD should so state when seeking easement approvals. Also,

the EFD should supply information on whether the proposed easement would create any change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register criteria for listing in the National Register, and, if so, whether the easement would (1) destroy or alter all or any part of the National Register property; (2) isolate it from, or alter, its surrounding environment; or (3) introduce visual, audible, or atmospheric elements that are out of character with such property and its setting.

c. The EFD will take such steps as may be required, including coordination with the Executive Director, Advisory Council on Historic Preservation, prior to the further processing of the easement proposal.

24. PROCEDURE IN CONNECTION WITH NATIONAL ENVIRONMENTAL POLICY ACT (PL 91-190) AND ENVIRONMENTAL IMPACT STATEMENTS.

a. ONIAVINST 6240.3D of 3 July 1977 and Marine Corps Order P-11000.8 of 17 April 1972 provide that, at the inception of an action, an assessment of the probable ecological and environmental impacts of that action shall be made by the affected activity, and that a candidate environmental impact statement shall be prepared if the assessment indicates that a significant adverse environmental effect will result from the proposed action, or that the proposed action is likely to be highly controversial with respect to environmental effects.

b. When submitting an easement proposal for required approvals, the EFD should include information on the activity's assessment of environmental impact, and on the status of the candidate environmental impact statement, if one is required.

25. STANDARD FORMATS FOR EASEMENTS.

The following formats are prescribed for use in granting easements for the various purposes recited in paragraphs 6 through 10:

a. Appendix "A". Easements of not more than fifty years for poles and lines for electrical power and communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, all as set forth in 43 U.S.C. 961. (This format does not cover underground electrical power and communication lines.)

b. Appendix "B". Easements for terms up to and including perpetuity for gas, water, and sewer pipelines; for underground electrical power and communication lines; and for oil pipelines; railroad tracks; substations for electric power transmission lines, telephones lines, and telegraph lines; pumping stations for gas, water, sewer, and oil pipelines; canals; ditches; flumes; tunnels; dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture; and any other purpose considered advisable, except a purpose covered by Appendixes "A", "C", or "D".

c. Appendix "C". Easements for terms up to and including perpetuity for roads and streets, including Defense Access Roads, and Federal-aid Highways in the Primary and Secondary Systems, pursuant to 23 U.S.C. 117(d). (Refer to paragraph 16 for provisions to be added to Appendix "C" when abutter's rights of

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access are to be relinquished in connection with easements for Primary and Secondary Federal-aid Highways.)

d. Appendix "D". Perpetual easements for portions of the National System of Interstate and Defense Highways, and for relinquishment of abutters' rights of access to such portions, pursuant to 23 U.S.C. 107(d) and 317.

26. NEGOTIATION OF EASEMENT TERMS AND CONDITIONS.

a. After making the preliminary determinations required by paragraph 22, the Commander/Commanding Officer of the EFD will consult with the officer commanding the affected activity to determine (1) the feasibility of granting the requested easement and (2) the need, if any, to include in the easement, in the Government's interest, terms and conditions supplementing those of the standard form.

b. If the Commanding Officer of the affected activity favors the granting, the EFD, using the applicable easement format specified in paragraph 25, will negotiate with the applicant to obtain concurrence in the terms and conditions under which the easement would be granted. Such terms and conditions should include all of those contained in the applicable standard form. However, when necessary, the easement may provide for such deviations as are mutually acceptable to the applicant, the head of the affected activity, and the Commander/Commanding Officer of the EFD, subject to compliance with all statutory requirements, and to the approval requirements of this Chapter. The proposed easement should also contain a description of the easement premises, which shall include no more land than is necessary for the purposes of the easement; and should specify the consideration to be paid to the Government, and the length of the easement term.

27. DRAFT OF PROPOSED EASEMENT.

The EFD will prepare a final draft of the proposed easement in the form developed by negotiation, and will ascertain that the draft is completely acceptable to the head of the affected activity and to the applicant.

28. APPROVALS FOR EASEMENT PROPOSALS

a.

Easement proposals
will be processed as follows:

(1) The EFD will obtain written concurrence from the head of the affected activity.

(2) The Commander/Commanding Officer of the EFD will make the determinations specified in paragraph 12 (if one or more of the determinations cannot be made, but the Commander/Commanding Officer considers, nevertheless, that the easement should be granted, refer to paragraph 31 for procedure).

(3) Following the steps in (1) and (2) above, the EFD will transmit a multiple-addressee letter to each member of the activity's

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echelon of command up to and including the major claimant.

(4) The multiple-addressee letter prescribed in (3), above, should:

(a) advise of the concurrence of the head of the affected activity and the applicant;

(b) state that the determinations specified in paragraph 12 have been made (if not, refer to paragraph 31);

(c) state the purpose, the term, the estimated fair value of the easement, and the basis for any proposed reduction in, or waiver of, the fair-value cash consideration (appraisal requirements may be waived in accordance with paragraph 5.h of Chapter 16, in these instances, for up to \$25,000);

(d) state whether National Register property is involved or will be affected and, if so, supply information responsive to paragraph 23;

(e) supply information on the environmental impact of the easement, in accordance with paragraph 24;

(f) recite, if applicable, determinations made in accordance with paragraphs 17 and/or 18 for the omission from the easement of the relocation provision and/or the removal-and-restoration provision;

(g) describe, and justify, any special conditions to be included in the easement (if there are any exceptions to the requirements of paragraphs 15.a, c, d, and e, other than those in (f), above, refer to paragraph 29 for procedure);

(h) state whether the easement grantee will be required to relocate or replace Government-owned facilities affected by the easement and, if so, estimate the cost (if over \$100,000, refer to paragraph 30);

(i) enclose a map showing the relationship of the easement area to the adjoining portion of the affected activity and to any present and planned improvements;

(j) state that the concurrence of the addressees in the easement proposal will be presumed unless advice to the contrary is received by the Commander/Commanding Officer of the EFD within 30 days from the date of the letter. All easements over property controlled by the Marine Corps must be approved in writing by the Commandant of the Marine Corps before being granted.

b. NAVFACENGCOM shall be included as an addressee on the multiple addressee letter prescribed in (3), above, for easement proposals which, in the judgment of the Commander/Commanding officer of the EFD/EFA, are controversial in nature or would significantly affect future Navy use or disposition of property, should be forwarded to NAVFACENGCOM in accordance with the procedures in paragraph 29. An explanation of the significance of the easement and potential impacts of the grant shall be included in the submission to NAVFACENGCOM.

c. Following receipt of all concurrences, or upon the presumption thereof pursuant to (j), above, the Commander/Commanding Officer of the EFD will execute the easement in the form approved, and will deliver it to the grantee in exchange for the specified consideration.

~~30. EASEMENT PROPOSALS HAVING ESTIMATED FAIR VALUE OVER \$100,000.-~~
~~Easement proposals of this type require concurrence of NAVFACENGCOM. Proposals shall be processed in accordance with paragraph 25, except that NAVFACENGCOM shall be included as an addressee on the multiple addressee letter and shall receive a draft of the proposed easement with the letter.~~

10. EASEMENT PROPOSALS REQUIRING REPLACEMENT OF FACILITIES BY GRANTEE.

a. When it is proposed, pursuant to paragraph 16.c, to grant an easement the consideration for which, in whole or part, is the replacement of a facility (which must be of the same category) at an estimated cost in excess of \$200,000, the EPD will proceed as follows:

- (1) take the steps and supply the data required by paragraph 28.a;
- (2) state in the multiple-addressee letter required by 28.a.(3) the circumstances which make the relocation necessary, and supply (a) cost data, (b) information supporting a position that the facilities as relocated or replaced will be of the same category as existed prior to relocation or replacement and are required for a continuing military need, and (c) a master plan layout of the installation in sufficient detail to show the proposed right-of-way and the facts on the financial arrangements for such new facilities, a copy of pertinent agreements and a DD Form 1391 for each affected facility.

11. EASEMENT PROPOSALS REQUIRING APPROVAL OF THE ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)

a. Because the delegation of authority from the Secretary of the Navy for the granting of easements is subject to certain conditions, proposed easements which do not meet those conditions may not be consummated without the prior approval of the Assistant Secretary of the Navy (I&E).

His approval is required under the following circumstances:

- (1) One or more of the determinations specified in paragraph 12 as conditions for the granting of an easement cannot be made.
- (2) The proposed easement does not meet the requirements of paragraphs 15.a, c, d, and e.

b. When the granting of an easement requires specific ASN (I&E) approval, the EPD will proceed as follows:

- (1) take the steps and supply the data required by paragraph 28.a;
- (2) state in the multiple-addressee letter required by 28.a.(3) the circumstances which make ASN (I&E) approval necessary, and furnish justification for use by NAVFACINCCOMEX in seeking such approval;
- (3) in the multiple-addressee letter, substitute for 28.a.(4)(j) the following:

"The concurrence of the addressees in the easement proposal will be presumed unless advice to the contrary is received by the Commander, Naval Facilities Engineering Command within 30 days from the date of this letter."

c. Following receipt of all concurrences, or upon the presumption thereof pursuant to b.(3) above, NAVFACENGCOMHQ will seek ASN(S&L) approval and, when obtained, will notify the Commander/Commanding Officer of the EFD that he may execute the easement in the form approved and deliver it to the grantee in exchange for the specified consideration.

32. AMENDMENTS OF EASEMENTS.

Easements may be amended upon concurrence of both parties. Procedures for granting easements shall be followed to the extent it is practical in amending easements.

33. ADMINISTRATION OF EASEMENTS.

After easements have been granted, Commanders/Commanding Officers of the EFDs, in coordination with the heads of the affected activities, will act as necessary to assure that the grantees remain in compliance with the terms and conditions of the easements.

34. PROCEDURES FOR THE TERMINATION OF AN EASEMENT BY THE NAVY.

The standard easement forms, Appendixes "A" through "D", provide for the termination of an easement by the Navy upon the failure of the grantee to comply with the terms and conditions of the easement; upon abandonment; or upon non-use for a period of two consecutive years. If a Commander/Commanding Officer of an EFD, in consultation with the head of the affected activity, considers that the circumstances clearly justify termination of an easement under the terms thereof, he may so terminate under the redelegation of authority in paragraph 14.d. Thereafter, action should be taken to assure that the land records reflect the termination.

35. TERMINATION OF AN EASEMENT BY THE GRANTEE.

The grantee may terminate an easement by a reconveyance or release to the United States, but the fact of termination does not, in itself, relieve the grantee of any obligation under the easement for the payment of money due the Government, or for the removal of the grantee's improvements and the restoration of the premises, to the extent directed by the Government. If the easement has not been recorded, the release may be accomplished by the grantee's return of the executed easement with a surrender and release to the United States endorsed thereon by the grantee. If the easement has been recorded, a separate, recordable reconveyance to the United States is required.

36. DISTRIBUTION AND RECORDS.

Distribution of the instruments and maintenance of the official records shall be as follows:

Original: To the grantee.

Signed Copies: A signed copy should be retained for the EFD files and when there is a cash consideration, a signed copy should be sent to the Navy Regional Finance Center, Washington, D.C.

Conformed Copies: These should be sent to the headquarters of the primary support command. For easements involving use of public lands, a copy shall be sent to the appropriate regional office of the Bureau of Land Management.

Film Copies: 105 millimeter copies of signed instrument should be provided to NAVFACENCOM in accordance with Chapter 27.

Payments: Payments submitted to EFDs by easement grantees should be sent to the Navy Regional Finance Center, Accounts Receivable and Claims Division (FR 20), Washington, D.C. 20390.

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APPENDIX A

SAMPLE FORMAT

GRANT OF EASEMENT

(for overhead electric power and communication lines, and for transmitting, relay, and receiving structures and facilities for radio, television, and other forms of communication.)

THIS INDENTURE, made the _____ day of _____, 19____ between the United States of America, herein called the Government, acting through the Department of the Navy, and _____, herein called the Grantee.

WHEREAS, the Government owns that certain real property identified as the _____, herein called the Station (or Facility); and

WHEREAS, the Grantee has requested an easement for the construction, installation, operation, maintenance, repair, and replacement of a _____ (on)(over) that portion of the Station (or Facility) hereinafter described; and

WHEREAS, the Secretary of the Navy has found that the granting of such easement on the terms and conditions hereinafter stated will not be incompatible with the public interest:

NOW THEREFORE, this indenture witnesseth that, in consideration of _____ dollars paid by the Grantee to the Government (recite any alternative, or additional, consideration applicable), the Government hereby grants to the said _____ and (his)(her)(their) heirs, representatives, and assigns (for a corporate grantee, substitute "and its successors and assigns"), for a period of _____ () years (not to exceed the limit of 50 years imposed by 43 U.S.C. 961) from the date hereof, an easement for the construction, installation, operation, maintenance, repair and replacement of a _____, such easement being (on)(over) that portion of the Station (or Facility) hereinafter called the Premises, and described as follows:

(Metes and bounds, or centerline, description)

(Rights-of-way for power and communication lines shall not exceed a width of 400 feet.)

(Sites for transmitting, relay, and receiving structures and facilities for radio, television and other forms of communication shall not exceed 400 feet by 400 feet.)

All as shown on a map marked "EXHIBIT A," attached hereto and made a part hereof.

This easement is granted subject to the following terms and conditions:

1. All work in connection with the construction, installation, operation, repair, and replacement of the _____ shall be done without cost or expense to the Government, and in accordance with plans previously approved by the Commander/Commanding Officer of the _____ Division, Naval Facilities Engineering Command.

2. The Grantee shall maintain the Premises and the _____ in good condition at all times, and shall promptly make all repairs thereto that may be necessary for the preservation of the condition of the Premises and the continued operation and maintenance of the _____.

3. The Grantee's rights hereunder shall be subject to such reasonable rules and regulations as may be prescribed by the Government to assure that the exercise of such rights will not interfere with Government activities at the Station (or Facility).

4. Upon the termination of this easement, the Grantee, at its expense, shall remove, to the extent requested by the Government, improvements installed or constructed hereunder, and shall restore the Premises to the same or as good a condition as that which existed prior to the exercise by the Grantee of its rights hereunder. Such restoration shall be done in a manner satisfactory to the Commander/Commanding Officer of the _____ Division, Naval Facilities Engineering Command.

(Provision 4, above, may be omitted when the conditions in NAVFAC P-73, chapter 21, paragraph 18 have been satisfied.)

5. If at any future time, the Government determines that the _____, or any portion thereof, unduly interferes with any of its activities, it shall have the right to terminate this easement, in whole or in part, to the extent necessary to eliminate such interference; PROVIDED that, unless the Government shall have determined that relocation is not feasible, it shall convey to the Grantee, without charge, a substitute easement permitting the Grantee to relocate the _____, or portion thereof, on adjacent Government property, at the Grantee's cost and expense. The substitute easement shall contain the same terms and conditions as those of this easement, and shall bear the same expiration date.

(Provision 5, above, may be omitted when the conditions in NAVFAC P-73, chapter 21, paragraph 17 have been satisfied.)

6. All or any part of this easement may be terminated upon failure by the grantee to comply with any of its terms and conditions; upon abandonment of the rights granted herein; or upon nonuse of such rights for a period of two consecutive years.

7. The Government may use the Premises of this easement for any purpose that does not unreasonably interfere with the use and enjoyment by the Grantee of the rights granted by this easement.

IN WITNESS WHEREOF, the Government, acting through the Department of the Navy, has caused this instrument to be executed the day and year written first above.

UNITED STATES OF AMERICA

By _____
Contracting Officer

ACKNOWLEDGMENT

(To be made in the form appropriate for the jurisdiction in which the easement will be recorded.)

APPENDIX B

SAMPLE FORMAT

GRANT OF EASEMENT

(For Gas, Water, Sewer, and Oil Pipelines; Underground Electric Power and Communication Lines; Railroad Tracks; Substations for Electric Power Transmission Lines, Telephone Lines, and Telegraph Lines; Pumping Stations for Gas, Water, Sewer, and Oil Pipelines; Canals; Ditches; Flumes, Tunnels; Dams and Reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish culture; and such other purposes as are not covered by Appendices A, C, or D.)

THIS INDENTURE, made the _____ day of _____ 19____ between the United States of America, herein called the Government, acting through the Department of the Navy, and _____, herein called the Grantee.

WHEREAS, the Government owns that certain real property identified as the _____, herein called the Station (or Facility); and

WHEREAS, the Grantee has requested an easement for the construction, installation, operation, maintenance, repair, and replacement of a _____ (on)(in)(over)(under) that portion of the Station (or Facility) hereinafter described; and

WHEREAS, the Secretary of the Navy has found that the grant of such easement on the terms and conditions hereinafter stated is not incompatible with the public interest;

NOW THEREFORE, this indenture witnesseth that, in consideration of _____ dollars paid by the Grantee to the Government (recite any alternative, or additional, consideration applicable), the Government hereby grants to the said _____ and (his)(her)(their) heirs, representatives, and assigns (for a corporate grantee, substitute "and its successors and assigns"), for a period of _____ () years from the date hereof (or in perpetuity, as appropriate), an easement for the construction, installation, operation, maintenance, repair, and replacement of a _____, such easement being (on)(in)(over)(under) that portion of the Station (or Facility) hereinafter called the Premises, and described as follows:

(Metes and bounds, or centerline, description)

All as shown on a map marked "EXHIBIT A", attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following terms and conditions:

1. All work in connection with the construction, installation, operation, repair, and replacement of the _____ shall be done without cost or expense to the Government, and in accordance with plans previously approved by the Commander/Commanding Officer of the _____ Division, Naval Facilities Engineering Command.

2. The Grantee shall maintain the Premises and the _____ in good condition at all times and shall promptly make all repairs thereto that may be necessary for the preservation of the condition of the Premises and the continued operation and maintenance of the _____.

3. The Grantee's rights hereunder shall be subject to such reasonable rules and regulations as may be prescribed by the Government to assure that the exercise of such rights will not interfere with Government activities at the Station (or Facility).

4. Upon the termination of this easement, the Grantee, at its expense, shall remove, to the extent requested by the Government, improvements installed or constructed hereunder, and shall restore the Premises to the same or as good a condition as that which existed prior to the exercise by the Grantee of its rights hereunder. Such restoration shall be done in a manner satisfactory to the Commander/Commanding Officer of the _____ Division, Naval Facilities Engineering Command.

(Provision 4, above, may be omitted when the conditions in NAVFAC P-73, chapter 21, paragraph 18 have been satisfied.)

5. If at any future time, the Government determines that the _____, or any portion thereof, unduly interferes with any of its activities, it shall have the right to terminate this easement, in whole or in part, to the extent necessary to eliminate such interference; PROVIDED THAT, unless the Government shall have determined that relocation is not feasible, it shall convey to the Grantee, without charge, a substitute easement permitting the Grantee to relocate the _____, or portion thereof, on adjacent Government property, at the Grantee's cost and expense. The substitute easement shall contain the same terms and conditions as those of this easement, and shall bear the same expiration date, if any.

(Provision 5, above, may be omitted when the conditions in NAVFAC P-73, chapter 21, paragraph 17 have been satisfied.)

6. All or any part of this easement may be terminated upon failure by the Grantee to comply with any of its terms and conditions; upon abandonment of the rights granted herein; or upon nonuse of such rights for a period of two consecutive years.

7. The Government may use the Premises of this easement for any purpose that does not unreasonably interfere with the use and enjoyment by the Grantee of the rights granted by this easement.

IN WITNESS WHEREOF, the Government, acting through the Department of the Navy, has caused this instrument to be executed the day and year written first above.

UNITED STATES OF AMERICA

By _____
Contracting Officer

ACKNOWLEDGMENT

(To be made in the form appropriate for the jurisdiction in which the easement will be recorded.)

APPENDIX C

SAMPLE FORMAT

GRANT OF EASEMENT

(For Roads, Streets, and Highways, including Federal-aid Highways in the Primary and Secondary Systems; and Defense Access Roads. (Refer to Appendix "D" for easements for sections of the National System of Interstate and Defense Highways.)

THIS INDENTURE, made the _____ day of _____ 19____ between the United States of America, herein called the Government, acting through the Department of the Navy, and _____, herein called the Grantee.

WHEREAS, the Government owns that certain real property identified as the _____, herein called the Station (or Facility); and

WHEREAS, the Grantee has requested an easement for the construction, installation, operation, maintenance, repair, and replacement of a _____ (on) (in) (over) (under) that portion of the Station (or Facility) hereinafter described; and

WHEREAS, the Secretary of the Navy has found that the grant of such easement on the terms and conditions hereinafter stated is not incompatible with the public interest;

NOW THEREFORE, this indenture witnesseth that, in consideration of _____ dollars paid by the Grantee to the Government (recite any alternative, or additional consideration applicable; no consideration will be charged for an easement for a Federal-aid Highway or Defense Access Road), the Government hereby grants to the said _____ and (his) (her) (their) heirs, representatives, and assigns (for a corporate grantee substitute "and its successors and assigns"), for a period of _____ () years from the date hereof (or in perpetuity, as appropriate), an easement for the construction, installation, operation, maintenance, repair, and replacement of a _____, herein called the Road, such easement being (on) (in) (over) (under) that portion of the Station (or Facility) hereinafter called the Premises, and described as follows:

(Metes and bounds, or centerline, description)

All as shown on a map marked "Exhibit A," attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following terms and conditions:

1. All work in connection with the construction, installation, operation, repair, and replacement of the Road shall be done without cost or expense to the Government, and in accordance with plans previously approved by the Commander/Commanding Officer of the _____ Division, Naval Facilities Engineering Command.

2. The Grantee shall maintain the Premises and the Road in good condition at all times and shall promptly make all repairs thereto that may be necessary for the preservation of the condition of the Premises and the continued operation and maintenance of the Road.

3. The Grantee's rights hereunder shall be subject to such reasonable rules and regulations as may be prescribed by the Government to assure that the exercise of such rights will not interfere with Government activities at the Station (or Facility). (This provision may be omitted from an easement for a Federal-aid Highway or Defense Access Road.)

4. The Government reserves the right to make such connections between the Road herein authorized and other roads on the Station (or Facility) as the Government may consider necessary, and also reserves to itself rights-of-way for all purposes on, under, over, or across the right-of-way herein granted; provided, however, that such reserved rights-of-way shall be used in a manner that will not unreasonably interfere with the use and enjoyment by the Grantee of the easement rights granted herein.

5. All or any part of this easement may be terminated upon failure by the Grantee to comply with any of its terms and conditions; upon abandonment of the rights granted herein; or upon nonuse of such rights for a period of two consecutive years.

IN WITNESS WHEREOF, the Government, acting through the Department of the Navy, has caused this instrument to be executed the day and year written first above.

UNITED STATES OF AMERICA

By _____
Contracting Officer

ACKNOWLEDGMENT

(To be made in the form appropriate for the jurisdiction in which the easement will be recorded.)

(The relocation provision and the removal - and - restoration provision, both of which appear in Appendices A and B pursuant to SECNAV requirements, are not so required in easements for roads, streets, or highways; hence their omission from this Appendix.)

(If an easement for a Federal-aid Highway in the Primary or Secondary System surrenders, to the State involved, abutters' rights of access, the easement shall reserve to the Government the rights set forth in NAVFAC P-73, chapter 21, paragraphs 16.a.(1) and 16.a.(2).)

APPENDIX D

SAMPLE FORMAT

DEPARTMENT OF THE NAVY

GRANT OF EASEMENT AND RELINQUISHMENT OF ACCESS RIGHTS

for a section of the National System of Interstate and Defense Highways
at the (name of Navy installation)

In furtherance of Title 23, U.S. Code, section 107(d), the UNITED STATES OF AMERICA, acting through the Department of the Navy, hereby grants to the State of _____, (insert title of highway department or official thereof, as appropriate), herein called the Grantee, an easement for a right-of-way for a controlled-access highway, herein called the Highway, as a part of the National System of Interstate and Defense Highways on, in, over, and across lands of the United States which are a portion of the _____, herein called the Station (or Facility), as shown on the map marked Exhibit A, and more particularly described on Exhibit B, both of which exhibits are attached hereto and made part hereof, together with all abutters' existing, future, and potential rights of access to, from, and between the right-of-way of the Highway and the remaining lands of the Station (or Facility), except such abutters' rights as shall be specifically reserved either by a condition of this easement or by the description in Exhibit B.

THIS EASEMENT is granted subject to the following provisions and conditions:

1. The Grantee shall at all times maintain the Highway in good condition and shall promptly make all repairs thereto needed to preserve a smooth-surface highway.
2. Any property of the United States damaged or destroyed by the Grantee incident to the use and occupation of the easement premises shall be promptly repaired, replaced, or relocated by the Grantee to the satisfaction of the (Commander) (Commanding Officer) of the _____ Division, Naval Facilities Engineering Command, and in accordance with plans and specifications which he has previously approved; or, in lieu of such repair, replacement, or relocation, the Grantee shall, if so required by such (Commander) (Commanding Officer), pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damage to, or destruction of, United States property.
3. (a) The United States reserves the right to construct, from time to time, grade-separation crossing structures and pedestrian crossing structures over or under the Highway at such points as it may deem necessary;

provided that such structures shall be constructed in accordance with standards for the National System of Interstate and Defense Highways approved by the Department of Transportation, Federal Highway Administration. The United States also reserves the right to cross over and under the right of way hereby granted with utility lines and related facilities; provided, however, that such rights shall be exercised in accordance with regulations issued by the Secretary of Transportation, and policies adopted by the Federal Highway Administrator.

(b) During any emergency declared by the President or the Congress of the United States, the United States shall have the right to enter and leave the Highway at any point along the abutting Government-owned land, and in connection therewith, the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation structures, including acceleration and deceleration lanes; provided that all such temporary facilities shall, subject to availability of appropriations, be removed within a reasonable time after official termination of the emergency.

4. This instrument is effective only insofar as the rights of the United States in the property involved are concerned; the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

5. All or any part of the right-of-way herein granted may be terminated by the Secretary of the Navy for failure to comply with any or all of the terms and conditions of this grant; for nonuse for a two-year period; or for abandonment of rights herein granted.

6. (Additional special provisions as necessary to meet particular circumstances of individual cases, such as the following:

a. Provision for construction and maintenance at the expense of the Grantee of necessary controlled-access facilities to, over, under, and across the Highway to meet the requirements of the military installation affected, pursuant to plans, specifications, and maps approved by the Commander/Commanding Officer of the KPD, and attached as exhibits to the grant.

b. Reservation of abutters' rights of access at or between specific points, designated on Exhibit A, to meet the Station's (or Facility's) existing and foreseeable requirements for direct entrance to, and exit from, the Highway.

c. Provision for construction and maintenance of special signs, signals, markers, etc.

d. Relocation of facilities adjacent to, and adversely affected by, the Highway construction.)

IN WITNESS WHEREOF, the United States of America, acting through
the Department of the Navy, has caused this instrument to be executed this
_____ day of _____, 19____.

UNITED STATES OF AMERICA

By _____
Contracting Officer

ACKNOWLEDGMENT

(To be made in the form appropriate for the jurisdiction in which
the easement will be recorded.)

21-0-3